

COMMONWEALTH OF VIRGINIA
STATE CORPORATION COMMISSION
AT RICHMOND, FEBRUARY 9, 2005

PETITION OF

AT&T COMMUNICATIONS OF
VIRGINIA, LLC

CASE NO. PUC-2003-00091

For reductions in the
intrastate carrier access
rates of Verizon Virginia Inc.
and Verizon South Inc.

FINAL ORDER

On May 8, 2003, AT&T Communications of Virginia, LLC ("AT&T"), filed a Petition with the State Corporation Commission ("Commission") seeking a reduction in the intrastate carrier access rates charged by Verizon Virginia Inc. ("Verizon Virginia") and Verizon South Inc. ("Verizon South") (collectively, "Verizon"). On June 6, 2003, Verizon filed a Motion to Dismiss, Answer and Affirmative Defenses. On June 17, 2003, AT&T filed a Response, and on June 27, 2003, Verizon filed a Reply.

On July 24, 2003, the Commission issued an Order Requesting Additional Filings, which noted that in their pleadings both AT&T and Verizon discussed the prior two settlement agreements approved by the Commission regarding intrastate access service prices.¹ In that Order, we directed the Commission's Staff ("Staff") to file a report on the results that have been achieved through implementing the settlement agreements adopted in Case Nos. PUC-2000-00242 and PUC-2000-00283 and gave the parties an opportunity to file comments subsequent to the Staff's report. The Staff filed its report on September 22, 2003. On October 3, 2003,

¹ *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Investigation of the appropriate level of intrastate access service prices of Verizon Virginia Inc.*, Case No. PUC-2000-00242, 2000 S.C.C. Ann. Rep. 361; *Commonwealth of Virginia, ex rel. State Corporation Commission, Ex Parte, In re: Investigation of the appropriate level of intrastate access service prices of Verizon South Inc.*, Case No. PUC-2000-00283, 2000 S.C.C. Ann. Rep. 368.

comments were filed by AT&T, Verizon, and MCI WorldCom Communications of Virginia, Inc. ("MCI").

On December 19, 2003, the Commission issued an Order Establishing Investigation in which we: (1) denied Verizon's Motion to Dismiss; (2) granted the Petition of AT&T for purposes of establishing an investigation to determine the proper level of intrastate access charges for Verizon; and (3) assigned this matter to a Hearing Examiner for further proceedings. The following parties participated in the proceedings before the Hearing Examiner: AT&T; Verizon; MCI; Qwest Communications Corporation of Virginia ("Qwest"); the Division of Consumer Counsel, Office of the Attorney General ("Consumer Counsel"); and the Staff.

On June 14, 2004, Hearing Examiner Alexander F. Skirpan, Jr., entered a Report in which he discussed the pleadings presented in this case and presented the following findings:

(1) Intrastate access charges, since established in response to the *Modified Final Judgment*,² have been designed to collect a subsidy for local exchange service from interexchange carriers;

(2) Interexchange carriers face growing competition from wireless and computer technologies that have the competitive advantage of not being required to provide the same level of subsidy for local exchange service;

(3) Competition from wireless and computer technologies, and the emergence of competition for local exchange service, have resulted in a precipitous drop in switched minutes of use ("MOU");

(4) The intrastate access charges put into effect by the settlements adopted by the Commission in Case Nos. PUC-2000-00242 and PUC-2000-00283 have failed to provide the

² *United States v. American Tel. and Tel. Co.*, 552 F. Supp. 131, 165 (D.D.C. 1982) ("*Modified Final Judgment*").

anticipated level of intrastate access revenues and have failed to produce the anticipated reductions in the average access revenues per minute;

(5) The General Assembly, by enacting § 56-235.5:1 of the Code of Virginia ("Code"), has established a pro-competitive, anti-subsidy public policy for the Commonwealth;

(6) Verizon should be given the opportunity to redesign its rates or regulatory plan to reflect the requirements of § 56-235.5:1 of the Code and to reflect reduced intrastate access revenues;

(7) On January 1, 2006, Verizon's intrastate access charges should be reduced to cost;

(8) The cost of intrastate access should be based on a per minute rate for originating end office local switching of \$0.002643 and a per minute rate for terminating end office local switching of \$0.001331; and

(9) Consistent with the requirements of § 56-235.5:1 of the Code, the Commission should establish a proceeding to examine the intrastate access charges of all local exchange carriers in the Commonwealth.

On July 6, 2004, AT&T filed comments on the Hearing Examiner's Report. AT&T states that the Hearing Examiner is entirely correct that Verizon's high access rates are precluding AT&T and other interexchange carriers from competing against wireless carriers and computer technologies that are not saddled with access subsidies. AT&T concludes that the Commission should adopt the Hearing Examiner's recommendation that access rates be reduced to cost as serving the best interests of Virginia consumers. However, AT&T argues that the Commission should not wait until January 1, 2006, to reduce access rates to cost; rather, AT&T asserts that the Commission should require such access charge reductions to become effective at the same time as Verizon's new alternative regulatory plan. In addition, AT&T states that the Commission should direct that all competitive local exchange carriers ("CLECs") competing in

Verizon's territory either match Verizon's new access rates or show cause why they should be permitted higher rates. Furthermore, AT&T asserts that, thereafter, the Commission can solicit comments from interested parties regarding the best way to address the access charges of Virginia's non-Verizon incumbent local exchange carriers ("ILECs").

On July 6, 2004, Qwest filed comments on the Hearing Examiner's Report. Qwest supports the Hearing Examiner's recommendation to reduce not only Verizon's intrastate access rates but also the intrastate access rates of all Virginia local exchange companies. Qwest also urges the Commission to review and make any necessary access charge reductions for all local exchange companies in Virginia by January 1, 2006. Furthermore, Qwest requests that the Commission clarify that under no circumstances will the reductions to Verizon's access charges be delayed beyond January 1, 2006.

On July 6, 2004, Verizon filed a response to the Hearing Examiner's Report. Verizon states that the Hearing Examiner correctly outlines how intrastate access charges have always been designed to provide a subsidy to local exchange service rates. Verizon also asserts that the Hearing Examiner correctly explains why the traditional approach to access charge policy is no longer sustainable in the competitive market that has developed in Virginia. However, Verizon states that the Hearing Examiner goes too far in recommending that access charges be reduced to cost; Verizon argues that it is not a non-profit corporation and should be allowed to recover direct costs, shared and common costs, and a reasonable profit. In addition, Verizon contends that the costs the Hearing Examiner recommends as the basis for access charges – Verizon Virginia's unbundled network element rates for end office switching – are not the appropriate costs on which to base carrier access service prices. Furthermore, Verizon states that it is premature to set a fixed date for access revenue reductions until the Commission has quantified and considered the impact that a reduction would have on retail rates. Specifically, Verizon

argues that the Commission should not set a date for access charge reductions until the magnitude of the reduction has been measured and the corresponding increases in retail rates have been considered and approved.

NOW THE COMMISSION, having considered the Hearing Examiner's Report, the record, the pleadings, and the applicable law, is of the opinion and finds as follows.

As found by the Hearing Examiner, intrastate access charges have been designed to collect a subsidy for local exchange service from interexchange carriers. We agree with Verizon that "[t]he Examiner also correctly explained why the traditional approach to access charge policy is no longer sustainable in the competitive market that has developed in Virginia."³ Indeed, the Hearing Examiner observed that "[m]ost of the parties offered alternative recommendations designed to end or reduce the subsidies provided by intrastate access."⁴

We find that Verizon's intrastate access charges should be decreased toward cost to reduce the amount of subsidies included in such charges. In this regard, we conclude that it is reasonable to reduce Verizon's intrastate access rates by removing the Carrier Common Line ("CCL") component currently included in such rates. Specifically, we find that this reduction should occur in two stages, as follows:

- 1) On or before August 1, 2005, 50% of the CCL component included in Verizon's intrastate access rates as of the date of this Final Order shall be removed from such rates; and
- 2) On or before February 1, 2006, the remainder of the CCL component shall be removed from Verizon's intrastate access rates.

In addition, to effectuate the elimination of the CCL component, we find that it is reasonable to adopt the Staff's proposal to change the CCL recovery mechanism back to a monthly per line

³ Verizon's July 6, 2004, Response at 1.

⁴ Hearing Examiner's Report at 21.

rate.⁵ Therefore, we find that Verizon should revise its tariffs for switched access service, effective on June 1, 2005, to reflect the CCL component as a per line rate. The monthly CCL per line rate for Verizon Virginia and Verizon South shall be based on the current fixed CCL revenue amounts and the most recently available number of access lines for each respective company.⁶ The resulting monthly CCL rates, which will be effective on June 1, 2005, will remain in effect until August 1, 2005, at which time such monthly rates will be reduced by 50% as required herein.⁷

The access rate reductions that we require herein do not result in a specific cost-based rate and may not eliminate all of the subsidies currently built into Verizon's access charges. We find, however, that such reductions represent a reasonable decrease based on the record in this proceeding. Moreover, if Verizon believes that any of these reductions result in intrastate access rates that do not permit Verizon to recover its costs, Verizon may file an application pursuant to the Commission's Rules of Practice and Procedure requesting specific cost-based intrastate access rates.⁸ In addition, we recognize that the settlements approved in 2000 set access charges for Verizon through 2005. We find that it is reasonable to modify those settlement rates as required herein based on the record in this proceeding and, as referenced below, based on the fact

⁵ Reducing and/or eliminating the CCL, and reverting it to a monthly per line rate, are some of the options discussed in the March 31, 2004, Staff Comments. As explained by the Staff, as part of the settlements in 2000, the CCL recovery mechanism was changed from a monthly per line rate to a fixed recovery amount. We find that reverting the CCL recovery mechanism back to a monthly per line rate will result in a reasonable implementation of the access rate reductions required herein.

⁶ Verizon Virginia and Verizon South shall use the same assessment procedure for applying the monthly CCL rate to interexchange carriers that was in place prior to the settlement agreements adopted in Case Nos. PUC-2000-00242 and PUC-2000-00283.

⁷ The monthly CCL rates subsequently will be eliminated on February 1, 2006.

⁸ In its July 6, 2004, Response, Verizon discusses specific components that it believes should be included in a cost-based rate. We will not rule on such issues as part of the instant proceeding. Rather, questions regarding the specific components of any particular cost-based rate should be addressed in any subsequent proceeding seeking to implement a cost-based rate.

that Verizon's alternative regulatory plan in effect at the time of such settlements has been replaced effective February 1, 2005.

The Hearing Examiner recommended that Verizon be given the opportunity to redesign its rates or regulatory plan in conjunction with a change in intrastate access charges. Subsequent to the Hearing Examiner's Report, Verizon filed an application with the Commission for approval of a new alternative regulatory plan ("Plan").⁹ On January 5, 2005, the Commission issued a Final Order in that case approving the Plan as modified by such Final Order, to become effective February 1, 2005, should Verizon elect to adopt it. On January 26, 2005, Verizon filed notice with the Commission electing to adopt such Plan. The Plan gives Verizon new flexibility in its pricing for local exchange services and, among other things, allows Verizon to increase local exchange rates. The Plan also permits Verizon to seek revenue-neutral price changes for local exchange and switched access services.¹⁰ As a result, the new Plan gives Verizon reasonable tools with which to address the access charge reductions required herein if it so chooses. Further in this regard, we also note that Verizon has not established that it currently needs above-cost access charges in order to subsidize other services. That is, as stated by Consumer Counsel, "[i]t has not been shown that the present rates for local telephone services are insufficient to recover the costs of providing such services."¹¹

In addition, we find that reducing the subsidies built into access charges is consistent with subsection (ii) of the local competition policy set forth in § 56-235.5:1 of the Code, which states

⁹ *Application of Verizon Virginia Inc. and Verizon South Inc. For Approval of a Plan for Alternative Regulation*, Case No. PUC-2004-00092.

¹⁰ As set forth in the Plan, the Commission may refuse to approve such filing if we find that it is not in the public interest or otherwise fails to comply with the Plan.

¹¹ Consumer Counsel's March 31, 2004, Comments at 3. Moreover, although Verizon asserted in Case No. PUC-2004-00092 that the prices for certain local exchange telecommunications services do not cover the cost of those services, Verizon provided no cost studies in that case to support such proposition.

that the Commission, "in resolving issues and cases concerning local exchange telephone service ... shall ... consider it in the public interest to, as appropriate ... (ii) promote competitive product offerings, investments, and innovations from all providers of local exchange telephone services in all areas of the Commonwealth...." The Hearing Examiner found that interexchange carriers face growing competition from wireless and computer technologies that have the competitive advantage of not being required to provide the same level of subsidy for local exchange service, and that competition from wireless and computer technologies, and the emergence of competition for local exchange service, have resulted in a precipitous drop in switched MOU.¹² Thus, lowering intrastate access charges by reducing the amount of subsidies included therein should provide interexchange carriers an opportunity to advance their competitive offerings.

Finally, the local competition policy set forth in § 56-235.5:1 of the Code also states that the Commission, "in resolving issues and cases concerning local exchange telephone service ... shall ... consider it in the public interest to, as appropriate ... (i) treat all providers of local exchange telephone services in an equitable fashion and without undue discrimination...." For example, Verizon argues in this regard that "nothing has been done to date to address CLECs' high access rates, even though CLECs are not even serving the very customers that the margin in the access rates was intended to benefit."¹³ Similarly, Qwest supports the reduction of intrastate access rates for all local exchange companies in Virginia.¹⁴ However, we make no finding – as part of this case – regarding the intrastate access rates assessed by CLECs and by non-Verizon

¹² Hearing Examiner's Report at 24. Indeed, as noted above, Verizon agrees that "the traditional approach to access charge policy is no longer sustainable in the competitive market that has developed in Virginia." Verizon's July 6, 2004, Response at 1.

¹³ Verizon's March 31, 2004, Comments at 15-16.

¹⁴ Qwest's July 6, 2004, Comments at 2.

ILECs. The instant case was initiated via a petition filed by AT&T against one defendant, Verizon. This is not a generic proceeding encompassing all CLECs and ILECs. We note, however, that AT&T "commits that its CLEC access charges will be no higher than Verizon's rates."¹⁵ Furthermore, although this proceeding does not establish intrastate long distance rates for interexchange carriers such as AT&T, there is no evidence in this case to conclude that AT&T will not follow through on its assertion that a reduction in Verizon's intrastate access rates will result in "reductions in long distance calling rates."¹⁶

Accordingly, IT IS HEREBY ORDERED THAT:

- (1) Verizon shall reduce its intrastate access charges as required in this Final Order.
- (2) On or before May 1, 2005, Verizon shall file revised tariffs with the Division of Communications for its switched access services, to be effective on June 1, 2005, which reflect the CCL component as a monthly per line rate as required by this Final Order.
- (3) At least thirty days' prior to any intrastate access rate reduction required by this Final Order, Verizon shall file revised tariffs with the Division of Communications for its switched access services to be effective as of the date of such required reduction.
- (4) This matter is dismissed.

AN ATTESTED COPY hereof shall be sent by the Clerk of the Commission to:
Lydia R. Pulley, Vice President, Secretary, and General Counsel, and Jennifer L. McClelland, Regulatory Counsel, Verizon Virginia Inc., 600 East Main Street, Suite 1100, Richmond, Virginia 23219; Mark A. Keffer, Chief Regulatory Attorney, and Ivars V. Mellups, Esquire, AT&T Communications of Virginia, Inc., 3033 Chain Bridge Road, Room 3-D, Oakton, Virginia 22185-0001; T. Bordon Ellis, Esquire, and Eric M. Page, Esquire, LeClair Ryan P.C.,

¹⁵ AT&T's July 6, 2004, Comments at 6.

¹⁶ AT&T's March 31, 2004, Comments at 8 n.12.

4201 Dominion Boulevard, Suite 200, Glen Allen, Virginia 23060; Susan Mohr, Regulatory Director, and Kristin L. Smith, Senior Attorney, Qwest Communications Corporation, 1801 California Street, Denver, Colorado 80202; C. Meade Browder, Jr., Senior Assistant Attorney General, Division of Consumer Counsel, Office of the Attorney General, 900 East Main Street, Second Floor, Richmond, Virginia 23219; and to the Commission's Office of General Counsel and Division of Communications.